

**Fleck, Diane (LA user)**

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**From:** Fleck, Diane (LA user)  
**Sent:** Thursday, September 5, 2019 1:33 PM  
**To:** Joseph Dillon - NOAA Federal  
**Cc:** Fleming, Terrence  
**Subject:** RE: ESA Consultation CA Se Proposed Rule

Hi Joe,  
Thanks for the information. If we have questions, we'll send an e-mail; hope your field work goes smoothly.  
Diane

*Diane E. Fleck, P.E., Esq.*  
U.S. EPA Region 9 WTR-2-1  
Southern California Field Office  
600 Wilshire Blvd., Suite 940  
Los Angeles, CA 90017  
Phone: 213 244-1836

**From:** Joseph Dillon - NOAA Federal <joseph.j.dillon@noaa.gov>  
**Sent:** Thursday, September 5, 2019 12:22 PM  
**To:** Fleck, Diane (LA user) <Fleck.Diane@epa.gov>  
**Cc:** Fleming, Terrence <Fleming.Terrence@epa.gov>  
**Subject:** Re: ESA Consultation CA Se Proposed Rule

Hi Diane,

Apologies for the delay in response. I'm traveling for work again with field days in-between.

I checked with our sea turtle expert on your list. Green sea turtles have been documented regularly using the lower San Gabriel river near the power plant facility there, as well as being in San Diego Bay (although I do not think San Diego Bay meets your salinity criteria). The San Gabriel River site likely meets your freshwater/1 ppt criterion at least during the rainy season. So it makes sense to include them. Leatherback sea turtles can be removed from the list though. They are a strictly marine species in the action area, unless you have some information that we do not have.

Please note that Southern Resident Killer Whales have been added to your species list. Given that the main component of their diet is salmonids (particularly chinook salmon species), we consider them whenever there is a project that may effect salmonids. If EPA determines that there is not likely to be an adverse effect to salmonids from the action, then a not likely determination could logically follow for the Southern residents. If EPA determines that the action may affect salmonids, you will have to consider the level of impact to the fish and then make a determination if that would affect the Southern resident killer whales in turn. We can discuss this as needed.

Essential Fish Habitat (EFH) for your action, as described on 8-29-2019, would be likely be restricted to Chinook and coho salmon because of their extensive utilization of some freshwater habitats. They are managed under the Pacific Salmon Fishery Management Plan (FMP). Habitat Areas of Particular Concern (HAPC) under the EFH regulations for this FMP include spawning areas, floodplains, etc. Please see page 16 of this document for a listing of the HAPC: (<https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/573a07797c65e405531b0c4d/1463421123630/HAPC-Supplemental.pdf>). A HAPC designation means we are supposed to scrutinize any actions there more thoroughly but in this case the salmon are ESA listed and we'll be doing that anyway! Since the San Francisco Bay

Delta is not part of the action, other types of EFH (Coastal Pelagics and Pacific Groundfish Fishery Management Plans) are not included.

ESA listed species under NMFS jurisdiction for your described action and action area:

- Sacramento River winter-run Chinook salmon ESU** (*Oncorhynchus tshawytscha*)
  - endangered (June 28, 2005, 70 FR 37160)
  - critical habitat (June 16, 1993, 58 FR 33212)
- Central Valley spring-run Chinook salmon ESU** (*Oncorhynchus tshawytscha*)
  - threatened (June 28, 2005, 70 FR 37160)
  - critical habitat (September 2, 2005, 70 FR 52488)
- California Coastal Chinook salmon ESU** (*Oncorhynchus tshawytscha*)
  - threatened (June 28, 2005, 70 FR 37160)
  - critical habitat (September 2, 2005, 70 FR 52488)
- Southern California steelhead DPS** (*Oncorhynchus mykiss*)
  - endangered (January 5, 2006, 71 FR 834)
  - critical habitat (September 2, 2005, 70 FR 52630)
- California Central Valley steelhead DPS** (*Oncorhynchus mykiss*)
  - threatened (January 5, 2006, 70 FR 37160)
  - critical habitat (September 2, 2005, 70 FR 52630)
- Northern California Coast steelhead DPS** (*Oncorhynchus mykiss*)
  - threatened (January 5, 2006, 70 FR 37160)
  - critical habitat (September 2, 2005, 70 FR 52630)
- Central California Coast steelhead DPS** (*Oncorhynchus mykiss*)
  - threatened (January 5, 2006, 70 FR 37160)
  - critical habitat (September 2, 2005, 70 FR 52630)
- South-Central California Coast steelhead DPS** (*Oncorhynchus mykiss*)
  - threatened (January 5, 2006, 70 FR 37160)
  - critical habitat (September 2, 2005, 70 FR 52630)
- Southern Oregon/Northern California Coast coho salmon ESU** (*Oncorhynchus kisutch*)
  - threatened (June 28, 2005, 70 FR 37160)
  - critical habitat (May 5, 1999, 64 FR 24049)
- Central California Coast coho salmon ESU** (*Oncorhynchus kisutch*)
  - endangered (June 28, 2005, 70 FR 37160)
  - critical habitat (May 5, 1999, 64 FR 24049)
- Southern DPS of North American green sturgeon** (*Acipenser medirostris*)
  - threatened (April 7, 2006, 71 FR 17757)
  - critical habitat (October 9, 2009, 74 FR 52300)
- Pacific eulachon/smelt southern DPS** (*Thaleichthys pacificus*)
  - threatened (March 18, 2010, 75 FR 13012)
  - critical habitat (October 20, 2011, 76 FR 65324)
- Southern Resident killer whale** (*Orcinus orca*)
  - endangered (November 18, 2005, 70 FR 69903)
  - critical habitat (November 29, 2006, 71 FR 69054)
- Loggerhead sea turtle** (*Caretta caretta*)
  - threatened (July 28, 1978, 43 FR 32800)
- Green sea turtle** (*Chelonia mydas*)
  - threatened (July 28, 1978, 43 FR 32800)

I do not have a list of key information to provide you at this time and do not have time to conduct a literature search right now. Given the years of coordination our agencies have on this topic, I expect you have everything I may already have anyway. Tom M. from the USFWS mentioned that SFEI (Jay Davis' group) was generating data on sturgeon and selenium. I have not looked at the available information recently, or requested other information, at this time from SFEI.

My schedule will remain very busy with field work and travel until near the end of October, unless early rains end the season prematurely. If you need to reach me, please email and I will work to find the time to touch bases.

I hope SoCal is treating you well,

Joe

On Mon, Aug 12, 2019 at 5:03 PM Fleck, Diane (LA user) <[Fleck.Diane@epa.gov](mailto:Fleck.Diane@epa.gov)> wrote:

Hi Joe,

Attached is a letter requesting verification of the NMFS species & habitat list for the ESA consultation on our California selenium water quality criterion proposal, to initiate informal consultation. We also request a list of essential fish habitat, as well as identification of any key information for our biological evaluation to help us find (up front) all the important documents for our review. We can discuss the letter's requests during our August 29<sup>th</sup> conference call.

The original is in the mail to you. Thanks, and talk to you soon.

Diane

*Diane E. Fleck*, P.E., Esq.

U.S. EPA Region 9 WTR-2-1

Southern California Field Office

600 Wilshire Blvd., Suite 940

Los Angeles, CA 90017

Phone: 213 244-1836

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Joe Dillon

Water Quality Specialist

NMFS West Coast Region - CA Coastal Area Office

777 Sonoma Avenue, Ste 325

Santa Rosa, CA 95404

707-575-6093